

No. 03-3110

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FILED

APR 07 2005

UNITED STATES OF AMERICA,

) LEONARD GREEN, Clerk

Plaintiff-Appellee,

v.

FLOYD M. BRUCE,

Defendant-Appellant.

) ORDER

BEFORE: NELSON and COOK, Circuit Judges; and ROSEN,<sup>\*</sup> District Judge.

A member of the court having requested rehearing of this case en banc, and less than a majority of the judges in regular active service having voted in favor of that request, the request for rehearing has been referred to the original panel pursuant to 6 Cir. I.O.P. 35(c).

A majority of this panel has voted to grant rehearing with respect to part III.E of our original decision, because it was erroneous in light of the decision entered one day earlier by this court in *United States v. Oliver*, 397 F.3d 369 (6<sup>th</sup> Cir.2005). We therefore vacate our earlier affirmance of Bruce's sentence, vacate Bruce's sentence, and remand for resentencing in light of *United States v. Booker*, 125 S.Ct. 738 (2005).

ENTERED BY ORDER OF THE COURT

  
Leonard Green, Clerk

<sup>\*</sup> Hon. Gerald E. Rosen, United States District Judge for the Eastern District of Michigan, sitting by designation.